

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F613013

CLEMA NAGY	CLAIMANT
AREA AGENCY ON AGING	RESPONDENT
RAMSEY, KRUG, FARRELL & LENSING, RISK MANAGEMENT RESOURCES, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED OCTOBER 12, 2007

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG, in Fort Smith, Sebastian County, Arkansas.

Claimant represented by JOHN VERKAMP, Attorney, Charleston, Arkansas.

Respondents represented by CONSTANCE CLARK, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on August 21, 2007, in Fort Smith, Arkansas. A pre-hearing order was entered in this case on July 11, 2007. This pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. Except for the correction of one clerical error, on issue #4, no changes were made in the pre-hearing order. A copy of the pre-hearing order with this correction noted thereon was made Commission's Exhibit No. 1 to the hearing.

The following stipulations were offered by the parties and are hereby accepted:

1. On July 14, 2006, the relationship of employee-self insured employer-TPA existed between the parties.

2. The appropriate weekly compensation rates are \$194.00 for total disability and \$154.00 for permanent partial disability.
3. On July 14, 2006, the claimant sustained a compensable injury to her left foot.
4. There is no dispute over the payment of medical expenses for the left foot at this time.
5. The respondents have controverted any and all benefits for a left knee injury.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. whether the claimant also sustained a compensable injury to her left knee on July 14, 2006.
2. The claimant's entitlement to medical services, temporary total disability from July 15, 2006 through a date yet to be determined, and attorney's fees for her alleged left knee injury.

In regard to these issues, the claimant contends:

"The claim is compensable and all reasonable necessary related medicals and compensation should be paid. The claim has been controverted in its entirety."

In regard to these issues, the respondents contend:

"The respondents acknowledge that the claimant sustained a compensable accidental injury to her left foot on July 14, 2006. They have paid the claimant's medical expenses related to her initial office visit of July 24, 2006. The respondents deny that the claimant sustained a compensable accidental injury to her left knee on July 14, 2006, or on any other date. They contend that any left knee

difficulties the claimant may be experiencing did not arise out of or in the course of the claimant's employment with Area Agency on Aging and they deny that there is any causal relationship between the claimant's employment (including any incident which occurred on July 14, 2006) and her left knee."

#### DISCUSSION

\_\_\_\_\_As indicated by the stipulations, the respondents concede that the claimant was involved in a specific employment related incident on July 14, 2006. The respondents further concede that the claimant sustained a compensable injury to her left foot, as a result of this incident. The central dispute in this case arises over whether the claimant also sustained a compensable injury to her left knee in this same employment related incident. The burden rests upon the claimant to prove such a "compensable injury".

First, she must show that her alleged injury complies with the statutory requirements of Ark. Code Ann. §11-9-102(4)(D). This subsection mandates that the claimant prove by medical evidence, the actual existence of the physical injury or condition alleged to be compensable. This subsection also requires that the actual existence of this physical injury or condition must be supported by "objective findings", as that term is defined by Ark. Code Ann. §11-9-102(16)(A)(i).

After consideration of the evidence presented, it is my opinion that the claimant has satisfied the statutory requirements for a "compensable injury" that are contained in Ark. Code Ann. §11-9-102(4)(D). The medical reports and records of Dr. Pamela Harmon are clearly sufficient to "establish" the actual existence

of a physical injury or condition involving the claimant's left knee. Further, these reports reveal the presence of "objective findings" to support the existence of this injury or condition. The x-rays, which were taken of the claimant's left knee on July 24, 2006, were interpreted by the radiologist as showing a questionable avulsion fracture of the cortex of the posterior aspect of the distal femur and degenerative medial compartment narrowing. However, Dr. Harmon stated that, in her opinion, these x-rays also showed the presence of fluid in the knee joint. In her subsequent physical examinations, Dr. Harmon noted the observation of effusion and swelling of the claimant's left knee.

Next, the claimant must prove that these medically "established" and objectively documented physical injuries or conditions, involving her left knee, satisfy the definitional requirements for a "compensable injury" that are found in Ark. Code Ann. §11-9-102(4)(A)(i). These definitional requirements are:

- (1) The injury or condition must arise out of and occur in the course of the employment.
- (2) The injury or condition must be caused by a specific incident.
- (3) The injury or condition must be identifiable by time and place of occurrence.
- (4) The injury or condition must cause internal or external physical harm to the claimant's body.
- (5) The injury or condition must be sufficient to require medical services or result in disability.

The medical record presented shows that the claimant has a long history of difficulties involving her left knee. These appear to have originated in an employment related injury in the early 1990's. The medical record further shows that since that time the claimant has had periodic episodes of increased difficulties with her left knee.

In June of 2005, the claimant apparently sought social security disability benefits for a multitude of complaints that included complaints with her left knee. The presence of these longstanding complaints is further supported by the degenerative joint disease of the left knee shown on the July 24, 2006 x-rays. These observed degenerative changes would be the result of longstanding progressive changes and could not have occurred over a 10 day period.

In order to satisfy the first three definitional requirements of Ark. Code Ann. §11-9-102(4)(A)(i), the claimant must prove the existence of a causal relationship between the July 14, 2006 employment related incident and her subsequent medically established and objectively documented difficulties with her left knee. She need not prove the existence of this causal relationship to an absolute or mathematical certainty or that the employment related incident was the sole or even major cause of the subsequent difficulties. She need only establish that it is likely or probable that the employment related incident played some causal role in the subsequent difficulties.

The only direct evidence that the claimant has offered to prove the existence of this causal relationship is her own testimony. Although the testimony of a party is never considered uncontradicted, this does not mean it can be arbitrarily disregarded. If such testimony is credible, it may be sufficient, in and of itself, to prove any fact it is legally competent to address. Clearly, the claimant's testimony would be legally competent to prove a reasonably close temporal relationship between the employment related incident and the onset of her current difficulties with her left knee.

The claimant testified that she experienced sudden and severe pain in her left knee and adjacent portions of her left leg that occurred contemporaneously with the employment related incident of July 14, 2006. It was also her testimony that additional symptoms and difficulties manifested themselves shortly thereafter.

To some extent, the foregoing testimony of the claimant is corroborated by that of her daughter, Danielle Floyd. Ms. Floyd testified that on July 14, 2006, she was living with the claimant and that, on that date, the claimant told her that she had hurt her leg at work.

The claimant also testified that on the day of the accident (July 14, 2006) she told her supervisor, Raney Rose, that she had been involved in an accident and had hurt her left knee. She stated that she specifically told Ms. Rose that, at the time of the accident, she had felt a "hot fiery pain" in her left knee. However, Ms. Rose testified that, when the claimant reported an

accident on July 14, 2006, she only reported an injury to her left foot and made no mention of any injury or pain involving her left knee.

Karen Self, who was the aid-coordinator at the time of the claimant's accident testified, that on July 14, 2006, the claimant called her and reported a work related injury to her left foot. However, Ms. Self further testified that the claimant made no mention about any injury to her left knee or any pain involving her left knee. She stated that the claimant first reported difficulties with her left knee 10 days following the accident, on July 24, 2006.

The initial report of injury (form ARN) was completed by Ms. Rose and signed by the claimant at 4:00 p.m. on July 14, 2006. This ARN gives the date of the accident as July 14, 2006, but indicates that the only portion of the claimant's body that was injured was her left foot. No mention is made of any injury or difficulties involving the claimant's left knee. The first written report of any alleged injury to the claimant's left knee was not made by the claimant until July 24, 2006.

The medical record shows that the claimant sought no medical treatment for any injury, particularly one involving her left knee until July 24, 2006, some 10 days following the accident. The claimant offers no explanation for this substantial delay in her seeking of medical treatment. Such a delay would appear extremely unusual in light of her testimony concerning the immediate onset of significant pain on July 14, 2006.

After consideration of all the evidence presented, I simply do not find the claimant's testimony to be sufficiently credible to supply the necessary causal relationship between her employment related accident of July 14, 2006, and her difficulties with her left knee for which she first sought medical treatment on July 24, 2006. Her testimony, concerning the existence of a close temporal relationship between this accident and the initial onset of her subsequent left knee difficulties, is contradicted by the more credible testimony of Ms. Rose and Ms. Self. The claimant's explanation for her signing of the original ARN (which mentions no injury to the claimant's left knee) is not convincing. Finally, the claimant's 10 day delay in seeking medical treatment is further inconsistent with the initial onset of significant pain and symptoms in the left knee at the time of the accident on July 14, 2006. Absent convincing evidence of the existence of a reasonably close temporal relationship between the July 14, 2006 employment related accident and the onset of the claimant's difficulties with her left knee, such difficulties could as likely be the result of a subsequent incident or activity or merely a recurrence or progression of the claimant's prior extensive difficulties with her left knee.

Therefore, I find that the claimant has failed to prove that her current left knee difficulties are the result of an injury that arose out of and occurred in the course of her employment with this respondent on July 14, 2006. As a result, she has failed to prove the occurrence of an injury to her left knee that arose out of and

occurred in the course of her employment, was caused by a specific incident, and is identifiable by time and place of occurrence. The claimant's failure to prove these necessary definitional requirements for a "compensable injury" under Ark. Code Ann. §11-9-102(4)(A)(i), requires a denial of her claim for benefits attributable to such an injury.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On July 14, 2006, the relationship of employee-self insured employer-third party administrator existed between the parties.

3. On July 14, 2006, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$194.00 for total disability and \$154.00 for permanent partial disability.

4. On July 14, 2006, the claimant sustained a compensable injury to her left foot.

5. The claimant has failed to prove by the greater weight of the credible evidence that, on July 14, 2006, she also sustained a compensable injury to her left knee. Specifically, she has failed to prove the occurrence of such an injury that arose out of and occurred in the course of her employment with the respondent, was caused by a specific incident, and is identifiable by time and place of occurrence.

6. There is no dispute, at the present time, over the payment of medical expenses related to the claimant's compensable left foot injury.

7. Any medical expenses incurred by the claimant for her left knee difficulties would not represent “reasonably necessary medical services” for her compensable injury. Thus, under Ark. Code Ann. §11-9-508, the respondents would not be liable for the expense of such services.

8. The claimant has failed to prove by the greater weight of the credible evidence that she has incurred any temporary total disability, as the result of the effects of her compensable left foot injury.

9. The claimant would not be entitled to any temporary total disability benefits for her alleged left knee injury.

10. The respondents have denied the occurrence of any compensable injury to the claimant’s left knee, on July 14, 2006, and have controverted the claimant’s entitlement to any and all benefits for such an injury.

#### ORDER

Based upon my foregoing findings and conclusions, I have no alternative but to deny and dismiss all claims for benefits attributable to an alleged employment related injury to the claimant’s left knee.

The claimant remains entitled to any appropriate benefits for her admittedly compensable left foot injury.

IT IS SO ORDERED.

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MICHAEL L. ELLIG  
ADMINISTRATIVE LAW JUDGE